

BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)

Implementation of Section 309(j)
Of the Communications Act —
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

RECEIVED
OCT 10 1996
Federal Communications Commission
Office of Secretary

REPLY COMMENTS OF INTERACTIVE AMERICA CORPORATION

Interactive America Corporation, Inc. ("IAC"), by counsel and pursuant to Sections 1.415 and 1.419, hereby replies to initial comments filed in response to the Commission's Further Notice of Proposed Rulemaking, FCC 96-330, slip op. (released September 10, 1996) ("Notice") in the above-captioned proceeding. IAC wishes to address just a few points raised in the initial round of comments.

At the outset, IAC reiterates its concern that the Commission is moving with undue haste in this rulemaking. *See* IAC Comments at 8. The Notice was released less than a month ago, and already IVDS licensees and other interested parties are compelled to submit their final reply comments. IAC's review of the docket file has revealed only three other parties that filed initial comments. IAC suspects, however, based on recent discussions with those involved in the nascent IVDS industry, that many potentially interested parties simply have been unaware of this proceeding. Most IVDS

024

companies are small and are unlikely to have Washington, D.C. counsel, making it difficult for them to participate when a proceeding has been unduly expedited, as this one has. Accordingly, the Commission should announce that it will accept additional post-reply comments in this docket.

Auction Eligibility. ITV, Inc. and IVDS Affiliates, LLC. (“ITV”) have asserted that winning bidders from the first IVDS auction that “defaulted” on their initial payments or subsequent installment payments should be categorically excluded from “future IVDS auctions.” ITV Comments at 2. ITV offers no basis for such a broad, punitive exclusion policy. Indeed, it is not even clear at this point, for several reasons, who can fairly be categorized as a defaulting party.

IAC might be characterized by some as “in default” when, in fact, it did not default, but merely sought a brief postponement of the initial downpayment deadline due to troubling post-auction revelations concerning the availability of IVDS equipment, coupled with the FCC’s strict and inherently defective build-out milestones. IAC still intends to make its downpayment should it prevail in pending litigation over the Commission’s failure to give any consideration to the sound basis for its postponement/waiver request. *See* D.C. Cir. Dkt. No. 96-1320. As it has turned out, IAC’s concerns about the equipment market were entirely justified, and it has been necessary for the Commission to modify the rules concerning which IAC sought

clarification.^{1/} It would be inappropriate to penalize IAC now because its predictive judgment spurred it to seek an appropriate waiver and clarification of the rules at an early stage.

IAC's circumstance is just one instance where a winning bidder's non-payment cannot be attributed to any ill-intent.^{2/} IAC has been subjected to lengthy scrutiny by the FCC concerning its participation in the first IVDS auction with no adverse finding. IAC understands that a significant number of other parties did not pay because they lost a key financial backer — and, indeed, some of these instances of “cold feet” appear to have been sparked by the very situation in the IVDS equipment sector that prompted IAC's postponement request.

ITV's assertion that the Commission should simply exclude these entities and individuals from future auctions “[w]ithout regard to the specific accuracy” of allegations of ill intent is untenable. ITV Comments at 2. Barring interested parties from taking part in an auction on such arbitrary grounds is clearly contrary to the public interest in obtaining the full value for spectrum. In the absence of an adjudicated finding

^{1/} See Amendment of Part 95 of the Commission's Rules to Modify Construction Requirements for Interactive Video and Data Service Licensees, 11 FCC Rcd 2472, 2473 (¶ 6) (1996).

^{2/} In fact, another set of jointly filed comments, filed by a group identifying itself as “IVDS Licensees,” it is alleged that some licensees have been declared in default on their installment payments due to defects in the FCC's payment collection and monitoring procedures. See IVDS Licensees Comments at 5-6.

of gross misconduct, misrepresentation, or bad faith, the Commission should not bar any entity or individual from future auction participation. Indeed, the Commission explicitly made such a finding less than one week ago.^{3/}

Ten Year License Terms. Both IVDS Licensees and Progressive Communications, Inc. ("Progressive") urge the Commission to adopt ten year license terms for IVDS. *See* IVDS Licensees Comments at 5; Progressive Comments at 1. IAC strongly supports this view. Ten year licenses are the norm for many other wireless communications services, and would both enhance the value of the spectrum to licensees and reduce regulatory burdens on the FCC.

Scheduling of Future IVDS Auctions. In its initial comments, IAC pointed out that it would be ill-advised for the Commission to move hastily to re-auction spectrum from the first IVDS auction, particularly because outstanding issues remain relating to initial auction winners, including IAC, that have not yet made initial downpayments or installment payments. *See* IAC Comments at 7-8. Both ITV and IVDS Licensees have similarly recommended that the Commission delay any future auction of IVDS spectrum, citing myriad technical and regulatory issues. ITV refers specifically to the still pending issue of non-paying first round auction winners, while also citing multiple petitions for reconsideration that remain pending with respect to the IVDS


^{3/} *See Interactive Video and Data Service ("IVDS") Licenses*, FCC 96-371, slip op. at 8 (¶ 12) (released October 4, 1996).

technical operating requirements and service rules. *See* ITV Comments at 7-9. IAC agrees with ITV that bidders will not be able to bid rationally in an auction without knowing how the spectrum will be used and what markets will be available. *See* ITV Comments at 9. The IVDS Licensees also mention the pending reconsideration petitions, the still unsettled state of the IVDS equipment market, and the fact that the FCC has experienced administrative problems in processing payments from existing licensees. *See* IVDS Licensees Comments at 3-6. For all of these reasons, the Commission should defer another IVDS auction until it can resolve each of these issues.

Respectfully submitted,

INTERACTIVE AMERICA CORPORATION

By:



Steven A. Lerman
Dennis P. Corbett
David S. Keir

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

October 10, 1996

Its Attorneys

CERTIFICATE OF SERVICE

I, Vera L. Pulley, hereby certify that true and correct copies of the foregoing "Reply Comments of Interactive America Corporation" were sent via first-class mail, postage prepaid, this 10th day of October, 1996, to the following:

*Eric Malinen, Esq.
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8002-C
Washington, D.C. 20554

J. Jeffrey Craven, Esq.
Janet Fitzpatrick, Esq.
Patton Boggs, L.L.P.
2550 M Street, NW
Washington, D.C. 20037

Henry R. Riggins, Esq.
Progressive Communications, Inc.
1720 Section Road, Suite 210
Cincinnati, OH 45237

William J. Franklin, Esq.
William J. Franklin, Chartered
1200 G Street, NW, Suite 800
Washington, D.C. 20005-3814



Vera L. Pulley

* By Hand Delivery